Supreme Court, U.S.
FILED
OCT 24 2008
OFFICE OF THE CLERK

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No. 08-548

IN THE

Supreme Court of the United States

ALLTEL COMMUNICATIONS, LLC,

Petitioner,

v.

CITY OF SPRINGFIELD, MISSOURI,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Tax Injunction Act ("TIA") provides that "[t]he district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." 28 U.S.C. § 1341. In *Jefferson County v. Acker*, 527 U.S. 423 (1999), this Court determined that the TIA did not bar a local tax authority from pursuing a tax collection action in federal court against federal officers where (1) the federal officers removed the action from state to federal court; and (2) the issue presented was whether federal law barred the enforcement of a local occupational tax. Since *Acker* was decided, lower federal courts have disagreed whether the holding of *Acker* is limited in whole or in part to the unusual circumstances of that case, or whether the TIA permits the assertion of federal jurisdiction whenever a state or local tax authority brings suit. The Eighth Circuit below adopted the latter view.

The Court should grant certiorari to resolve the following questions:

1. Following *Acker*, may federal courts adjudicate claims brought by tax authorities regarding the validity and meaning of disputed tax provisions under state and local law, notwithstanding that a ruling in favor of the taxpayer would "enjoin, suspend or restrain the assessment, levy or collection of [the] tax under State law"?

2. If *Acker* continues to be read for the proposition that the TIA is inapplicable whenever a state or local tax authority is the plaintiff, should the Court revisit and confine *Acker* on the grounds that the recognition of such a broad exception to the TIA is irreconcilable with the plain language and purpose of the statute, and opens the floodgates to federal diversity actions regarding the validity and meaning of tax provisions under state and local law?

PARTIES TO THE PROCEEDING

In addition to Alltel Communications, LLC, Cingular Wireless LLC and Southwestern Bell Wireless, LLC were appellants in the court of appeals. The City of Springfield, Missouri, was an appellee in the court of appeals.

CORPORATE DISCLOSURE STATEMENT

Petitioner Alltel Communications, LLC is a wholly owned subsidiary of Alltel Corporation. Alltel Corporation is a privately owned entity. On June 5, 2008, Verizon Wireless entered into an agreement to acquire Alltel Corporation in a cash merger pending regulatory approvals. After consummation of the proposed transaction, Alltel Corporation will be a direct, wholly owned subsidiary of AirTouch Cellular and an indirect, wholly owned subsidiary of Verizon Wireless. Verizon Wireless is a joint venture of Verizon Communications and Vodafone.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Alltel Communications, LLC ("Alltel") respectfully submits this petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The decision of the United States Court of Appeals for the Eighth Circuit is reported at 531 F.3d 595. App. 1a. The order denying the petitions for rehearing is unreported. App. 143a. The decisions of the United States District Court for the Western District of Missouri are also unreported. App. 44a-142a.

JURISDICTION

The United States Court of Appeals for the Eighth Circuit issued its decision on July 3, 2008, App. 2a, and denied a timely petition for rehearing filed by Alltel on August 27, 2008, App. 144a. This Court has jurisdiction under 28 U.S.C. § 1254(1). The jurisdiction of the district court was invoked under 28 U.S.C. § 1332.

PERTINENT STATUTES AND ORDINANCES INVOLVED

The Tax Injunction Act, 28 U.S.C. § 1341, provides: "The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State."

The Anti-Injunction Act, 26 U.S.C. § 7421, provides in pertinent part: "Tax.—Except as [otherwise] provided in [Title 26] . . . , no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed." *Id.* § 7421(a).

The Johnson Act, 28 U.S.C. § 1342, provides: "The district courts shall not enjoin, suspend or restrain the operation of, or compliance with, any order affecting rates chargeable by a public utility and made by a State administrative agency or a rate-making body of a State political subdivision, where: (1) Jurisdiction is based solely on diversity of citizenship or repugnance of the order to the Federal Constitution; and, (2) The order does not interfere with interstate commerce; and, (3) The order has been made after reasonable notice and hearing; and, (4) A plain, speedy and efficient remedy may be had in the courts of such State."

Section 70-452 of the City of Springfield, Missouri Code of Ordinances provides: "Every person engaged in the business of supplying telephones, and telecommunications and telephonic service, and telecommunications services, within the city shall pay as a license tax a sum equal to six percent of the gross receipts from such business."

STATEMENT OF THE CASE

A. Factual Background

This case arises out of a dispute over the validity and meaning of a municipal tax ordinance under state and local law. In 2000, the City of Springfield, Missouri (the "City") adopted an ordinance (the "2000 Ordinance" or the "Ordinance") that imposes a six-percent tax on the gross receipts of any business "supplying telephones, and telecommunications and telephonic service, and telecommunications services, within the city." Springfield Code of Ordinances § 70-452. The 2000 Ordinance is an amended and recodified version of gross receipts ordinances dating back to World War II that applied only to "telephones and telephonic service," not "telecommunications and telephonic service."

Petitioner Alltel is a leading provider of commercial mobile radio services ("CMRS"), or cell phone services, throughout the United States, and offers cell phone services to customers in Springfield. On April 14, 2004, approximately four years after the 2000 Ordinance was adopted, the City retained outside counsel and sent letters to Alltel and other CMRS providers demanding payment by April 29, 2004, of back taxes purportedly due under the 2000 Ordinance and its predecessor. Alltel refused to pay the gross receipts taxes demanded by the City.

B. Proceedings Below

Following Alltel's refusal, the City chose not to follow its mandatory assessment and collection procedures set forth in the Springfield Code, *see* Springfield Code of Ordinances §§ 70-151 to -157. Instead, the City filed a diversity action in the United States District Court for the Western District of Missouri. As originally framed, the City's complaint stated only a collection claim against Alltel, several other CMRS providers, and one wireline provider for back taxes, penalties, and interest allegedly due and owing. Approximately one year after the City brought suit, the federal case was stayed while the Missouri courts considered and ultimately sustained the City's state-court challenge to a 2005 Missouri statute (HB 209) that the Missouri Legislature had adopted for the express purpose of prohibiting local tax collection suits against telecommunications providers. *See, e.g.*, *City of Springfield v. Sprint Spectrum L.P.*, 203 S.W.3d 177, 179-80 (Mo. 2006).

After further proceedings in the district court, on February 7, 2007, the City was granted leave to file a Second Amended Complaint adding a claim for "a declaratory judgment pursuant to 28 U.S.C. § 2201 *as to the validity and applicability* of the Ordinance ...." App. 170a (emphasis added). According to the City's Second Amended Complaint, the City added the declaratory judgment claim because Alltel and other CMRS providers had challenged not only "the applicability of the Ordinance to their particular 'Commercial Mobile Radio Services,'" but also "the City's authority to enact and enforce the Ordinance." App. 160a. The Second Amended Complaint thus stated

three claims for relief: (1) a collection claim against Alltel and other CMRS providers for having "failed to remit taxes due and owing the City of Springfield for the past five (5) years and continuing," App. 166a; (2) a declaratory judgment claim against Alltel and other CMRS providers requesting rulings that the "Springfield Ordinance, which includes the terms 'telephone' and 'telephonic' applies to the Wireless Defendants' services" and that "the Wireless Defendants [are] liable to pay taxes under the Ordinance," App. 170a; and (3) a collection claim against a wireline carrier (not at issue here), App. 167a.

In response to the Second Amended Complaint, Alltel filed an answer and contingent counterclaim[1] as well as a motion to dismiss under Fed. R. Civ. P. 12(b)(1) and 12(b)(6). In its motion to dismiss, Alltel argued that, consistent with the mandatory collection procedures set forth in the City Code, an unbroken line of controlling Missouri Supreme Court decisions dating back to the nineteenth century, and the Tax Injunction Act ("TIA"), the City was barred from pursuing its collection and declaratory judgment claims in federal court. In the alternative, Alltel opposed the City's collection and declaratory judgment claims on the merits, arguing that the 2000 Ordinance was invalid on the grounds that CMRS constitutes a "telecommunications" service, not a "telephone" service, the City is not authorized to tax

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[1] Without waiver of its position that the district court lacked jurisdiction, Alltel asserted a contingent counterclaim for declaratory judgment and attorneys' fees to preserve its rights in the event the district court entertained jurisdiction over the City's Second Amended Complaint in whole or in part. Doc. 459.

CMRS providers under the City of Springfield Charter, and the City's attempt in 2000 to expand the reach of the gross receipts tax without obtaining voter approval violated the Missouri Constitution. Docs. 457-458.

The district court dismissed the City's tax collection claim without prejudice under Fed. R. Civ. P. 12(b)(6), holding at least implicitly that the City's collection claim was not ripe under controlling Missouri law because the City had failed to comply with its own mandatory and exclusive tax assessment and collection procedures. App. 70a-76a. The district court refused, however, to dismiss the City's separate claim for declaratory relief. App. 76a-89a. As to that claim, the district court agreed with Alltel that Missouri's exclusive tax remedy doctrine as currently articulated by the Missouri Supreme Court would bar a Missouri court from exercising subject matter jurisdiction, but determined that the Missouri Supreme Court would approve previously unrecognized exceptions to the jurisdictional bar in order to entertain the City's declaratory judgment claim regarding the validity and meaning of the 2000 Ordinance. App. 77a-79a, 106a, 110a. Although Alltel argued that the Tax Injunction Act also barred the City's declaratory judgment claim, Doc. 458 at 11 n.10, the district court did not rule on the TIA's applicability. Having thus rejected or ignored Alltel's jurisdictional objections, the district court reached the merits of the City's claim for declaratory relief, rejected Alltel's challenge to the validity of the 2000 Ordinance under the Missouri Constitution and the Springfield City Charter, and ruled that the Ordinance is "enforceable and that it applies to cell phone services just as it applies to land line telephone services." App. 45a.

On appeal, the Eighth Circuit affirmed the district court's award of declaratory relief to the City.[2] In pertinent part, the Eighth Circuit rejected Alltel's argument that the exercise of federal subject matter jurisdiction over the City's declaratory judgment claim was barred by the TIA, reasoning that "neither the text of § 1341 nor the relevant Supreme Court holdings compel such a result." *City of Jefferson City, Missouri v. Cingular Wireless LLC*, 531 F.3d 595, 604 (8th Cir. 2008). Although the court acknowledged that the TIA ordinarily bars declaratory judgment actions to adjudicate the validity of a state tax, *id.* at 603, the Eighth Circuit broadly construed this Court's decision in *Jefferson County, Alabama v. Acker*, 527 U.S. 423 (1999), to endorse the propositions that the jurisdictional bar in the TIA is inapplicable when (1) the tax authority is the plaintiff; and (2) the dispute concerns "the application of the tax" rather than the tax authority's "'right' or 'power' to tax." *City of Jefferson City*, 531 F.3d at 604. As the Eighth Circuit phrased it, "there is a crucial distinction between a plaintiff who seeks a declaratory judgment that a specific tax is unconstitutional or invalid and a plaintiff who seeks a declaratory judgment that a particular taxpayer is engaged in an activity that makes the taxpayer subject to a state or local tax." *Id.* (citing *Hibbs v. Winn*, 542 U.S. 88, 104 (2004), and *Acker*, 527 U.S. at 433-35). Reasoning that the City had brought the declaratory judgment claim and further asserting (erroneously) that the City was not seeking a ruling on "whether the tax is

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[2] The City did not appeal the district court's dismissal of its collection claim.

valid,"[3] the court held that the City's "claim for declaratory judgment was not barred by § 1341 because it was not a claim by a taxpayer seeking to prevent tax collection proceedings." *Id.* Like the district court, the Eighth Circuit then reached the merits of the City's declaratory judgment claim, rejected Alltel's argument that the 2000 Ordinance was invalid under the Missouri Constitution and the Springfield City Charter, and held that CMRS constitute "telephonic service" within the meaning of the Ordinance. *Id.* at 605.

Alltel and Cingular Wireless LLC each filed timely petitions for rehearing, which were denied.

REASONS FOR GRANTING THE PETITION

The Eighth Circuit's decision to render a declaratory judgment on the validity and meaning of a local tax ordinance adopted by the City of Springfield, Missouri—notwithstanding the district court's dismissal of the City's collection claim consistent with controlling Missouri state law—reflects an expansive reading of this Court's holding in *Acker* on an issue that has divided the lower federal courts. Moreover, the decision below threatens to embroil the federal judiciary with increasing frequency in core disputes regarding the

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[3] The Eighth Circuit's assertion that the City was not seeking a declaration regarding the validity of the tax was plain error, because the City's claim for declaratory relief requested a ruling on the validity of the tax, App. 170a. Furthermore, in awarding the City declaratory relief, both the district court and the Eighth Circuit expressly *rejected* the wireless carriers' arguments that the 2000 Ordinance was *invalid*. *City of Jefferson City*, 531 F.3d at 611-14.

validity and meaning of state and local tax laws. Accordingly, the Court should grant certiorari to resolve two issues:

First, following this Court's decision in *Acker*, is the categorical prohibition in the TIA on the exercise of federal subject matter jurisdiction over claims "to enjoin, suspend or restrain the assessment, levy or collection of any tax under State law" inapplicable whenever a state or local tax authority brings suit to obtain a federal declaration or similar relief regarding the validity and meaning under state law of a state or local tax, notwithstanding that a ruling in favor of the taxpayer would effectively "enjoin, suspend or restrain" the tax?

Second, if *Acker* continues to be read for the proposition that the TIA is *never* a bar to a federal action initiated by a tax authority to determine the validity and meaning of state and local tax laws, should the Court revisit and confine *Acker* on the grounds that the recognition of such a broad exception to the TIA is irreconcilable with the plain language and history of the statute, and threatens to open the floodgates to federal diversity actions to determine the validity and meaning of tax provisions under state and local law, issues that traditionally have been reserved to the states?

As set forth more fully below, the Eighth Circuit's decision that the TIA does not deprive federal courts of jurisdiction to adjudicate a tax authority's declaratory judgment claim regarding the validity of tax provisions under state and local law embraces a broad reading of *Acker* that is inherently flawed and irreconcilable with

the plain language of the statute and this Court's decision in *California v. Grace Brethren Church*, which held that the Act prohibits the exercise of jurisdiction over suits for "declaratory as well as injunctive relief," 457 U.S. 393, 408 (1982). Contrary to the Eighth Circuit's analysis, the application of the TIA to a declaratory judgment action regarding the validity and meaning of a tax provision under state and local law should not turn on whether the action is brought by the tax authority or the taxpayer.

There is no support for drawing this distinction in the language of the statute. In addition, regardless of whether suit is brought by the tax authority or the taxpayer, the enforceability of the tax is at issue, federal interference with state and local tax regimes is threatened, and on the face of the pleadings it is as likely as not that the federal court's decision will arrest the state assessment and collection process. To assume jurisdiction over a tax authority's declaratory judgment claim regarding the validity of a state or local tax under state law is to acknowledge, perforce, that the tax authority might lose, and is also incompatible with the settled rule that federal subject matter jurisdiction should be construed narrowly, particularly in cases that concern subjects—like state and local taxation—that traditionally have been left to state courts. *See, e.g.*, *Romero v. Int'l Terminal Operating Co.*, 358 U.S. 354, 379 (1959) (noting the "traditional reluctance of this Court to expand the jurisdiction of the federal courts through a broad reading of jurisdictional statutes"); *Fair Assessment in Real Estate Ass'n, Inc. v. McNary*, 454 U.S. 100, 108 n.6 (1981) (stating that the "special reasons justifying the policy of federal noninterference with state tax collection are obvious" (quotation omitted)).

Lower federal courts are divided as to whether this Court's decision in *Acker*—which held that the TIA did not bar a municipal suit in federal court against federal officers to collect a local occupational tax over a federal defense—extends to federal *declaratory relief* claims brought by tax authorities that present tax issues arising under *state and local law*. Left undisturbed, the decision below portends a massive shift from state to federal courts of responsibility for determining the validity and meaning of state and local tax laws. Moreover, the decision below threatens to put federal courts between warring state agencies and instrumentalities on issues of tax law and policy. For example, in a parallel state-court proceeding directly related to this case, the City of Springfield challenged the legality, under the Missouri Constitution, of a 2005 Missouri statute (HB 209) that purported to extinguish the City's right to sue CMRS providers for back taxes. *City of Springfield v. Sprint Spectrum L.P.*, 203 S.W.3d 177 (Mo. 2006). Though that dispute was ultimately resolved by the Missouri state courts, nothing in the Eighth Circuit's ruling would prevent a federal court from assuming jurisdiction in such a tax case and ruling in favor of one state agency or instrumentality over another; indeed, before the constitutionality of the 2005 Missouri state statute was resolved in state court, the City asked the district court to hold the 2005 state tax statute unconstitutional. Doc. 250.

Moreover, extending *Acker* to declaratory judgment actions not only invites federal court intrusion on core questions of state tax law and policy, but it opens a huge breach in the TIA. Because *Acker* involved a tax collection action that was removed from state court to

federal court, an expansive reading of *Acker* invites removal whenever the diversity requirements of 28 U.S.C. § 1332 are satisfied. Thus, the Eighth Circuit's decision encourages taxpayer defendants in state court tax actions to sidestep the TIA by removing those cases to federal court.

I. The Court Should Grant Certiorari To Clarify Whether, Following *Acker*, The Tax Injunction Act Bars A Tax Authority From Seeking A Federal Declaratory Judgment Regarding The General Validity And Applicability Of State And Local Tax Laws.

The Tax Injunction Act prohibits a federal court from "enjoin[ing], suspend[ing] or restrain[ing] the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." 28 U.S.C. § 1341.[4] As this Court has observed, and as the plain language of the statute reflects, "[t]he Tax Injunction Act is grounded in the need of States to administer their fiscal affairs without undue interference from federal courts," *Arkansas v. Farm Credit Servs.*, 520 U.S. 821, 832 (1997), and "[t]he federal balance is well served when the several States define and elaborate their own [tax] laws through their own courts and administrative processes and without undue interference from the Federal Judiciary," *id.* at 826. Consistent with these principles, this Court "has interpreted the Tax Injunction Act quite broadly, such that federal district

[4] For purposes of applying the TIA, "[s]tate taxation . . . includes local taxation." *Hibbs*, 542 U.S. at 100 n.1.

courts are now virtually precluded from hearing any state or local tax suit." Bradley W. Joondeph, *Exploring The "Myth Of Parity" In State Taxation: State Court Decisions Interpreting Public Law 86-272*, 13 Wash. U. J.L. & Pol'y 205, 206 (2003) (citing *Grace Brethren*, 457 U.S. at 411). In particular, the Court has held that the TIA bars not only suits that seek to "enjoin" state and local tax laws, but also suits seeking declaratory relief that would have the same practical effect. *See Grace Brethren*, 457 U.S. at 408.

A. *Acker* Is A *Sui Generis* Case That Produced A Holding Of Doubtful Correctness And Uncertain Breadth.

In *Acker*, Jefferson County, Alabama sought to enforce an occupational tax ordinance against two federal judges who held court within the County. 527 U.S. at 429. The judges claimed that they were shielded from any obligation to pay the tax by federal law and argued, among other things, that the ordinance constituted a licensing scheme that did not qualify as a permissible tax under the Public Salary Tax Act, 4 U.S.C. § 111.

The County brought suit in state court to collect the tax, and the federal judges removed the County's collection suit to federal district court under the federal officer removal statute, 28 U.S.C. § 1442. After this Court held that the judges were entitled to remove the case under Section 1442, the Court confronted a conflict presented by the TIA: Notwithstanding that the defendant judges had an unqualified, statutory right to removal, did the TIA negate the assertion of federal

jurisdiction over the County's collection claim on the ground that, in defense of the action, the judges were seeking to "enjoin, suspend, or restrain the assessment, levy or collection of [the] tax under State law"? 28 U.S.C. § 1341.

For reasons that are not clear, the TIA issue presented by the County's collection action in *Acker* was not resolved narrowly on the basis of the exception set forth in the TIA itself, which provides that the prohibition imposed by the statute does not apply when "a plain, speedy and efficient remedy may [not] be had in the courts of [the] State," 28 U.S.C. § 1341. In the unusual circumstances of *Acker*, the federal officer removal statute—which conferred an unqualified right on the judges to remove the case to federal court—arguably rendered the Alabama courts unavailable to resolve a tax dispute involving federal officers. *See, e.g.*, *Willingham v. Morgan*, 395 U.S. 402, 406-07 (1969) (holding that "the right of removal under § 1442(a)(1) is made absolute whenever a suit in a state court is for any act 'under color' of federal office"). Moreover, "[h]ad the plaintiffs in [*Acker*] been barred from suit [by the TIA], there would have been no available forum at all for their claims." *Hibbs*, 542 U.S. at 120 (Kennedy, J., dissenting); *id.* at 108 n.10 (majority opinion) ("The [TIA] requires the State to provide taxpayers with a swift and certain remedy when they resist tax collections." (emphasis omitted)).

Instead, the Court chose to resolve the TIA issue by holding that the TIA "does not bar collection suits, nor does it prevent taxpayers from urging defenses in [collection] suits that the tax for which the collection

sought is invalid." *Acker*, 527 U.S. at 435. Since *Acker* was decided almost ten years ago, the foregoing statement has generated considerable confusion in the lower courts.

First, it is unclear whether the Court's holding in *Acker* is narrowly confined to "collection" actions that do not implicate the validity or meaning of a tax *under state or local law*, or whether *Acker* is intended to state a general rule that the TIA is inapplicable to *any* tax suit initiated by a state or local tax authority, regardless of the relief requested, regardless of whether the relief requested ultimately turns on the application of federal or state law, and regardless of whether the case is originally brought in federal court or (as in *Acker*) removed from state court to federal court by the defendant. The narrower reading of *Acker* is supported by the facts that the case arose in highly unusual circumstances and did not involve a challenge to the general validity or applicability of the Jefferson County, Alabama ordinance as a matter of state or local law. Rather, the case involved a challenge to a *unique* application of the County ordinance to federal officers based on *federal* law. Furthermore, though the Court in *Acker* appeared to emphasize that the intrusive potential of a collection suit was minimal, *see id.* at 440 ("Jefferson County has done no more than institute a collection suit"),[5] the Court cited its prior decision in

[5] A collection action arguably threatens minimal interference with state tax administration because, typically, the validity of the disputed tax and the amount of the assessment are either not at issue or have been determined previously. *See, e.g., City of Philadelphia v. Opinion Dynamics*

(Cont'd)

Grace Brethren approvingly for the proposition "that declaratory relief falls within the [TIA]'s compass." *Id.* at 433 (citing *Grace Brethren*, 457 U.S. at 408).[6]

Second, if the holding of *Acker* is construed broadly for the proposition that the TIA has no application whatsoever to a suit initiated by a state or local tax authority, it is not only irreconcilable with the text and purpose of the statute for the reasons set forth below, but in tension with *Grace Brethren*'s holding that the TIA "prohibits a district court from issuing a declaratory judgment holding state tax laws unconstitutional."

(Cont'd)

Corp., 185 F. Supp. 2d 442, 443 & n.1 (E.D. Pa. 2002) (noting that the City filed a collection action to obtain a fixed amount). In this case, however, there is no collection claim to support the exercise of federal jurisdiction, because the City's collection claim was dismissed on the ground that it was barred by a Missouri rule of administrative exhaustion. Furthermore, in contrast to *Acker*, in this case the City affirmatively invited the federal court to rule on the validity of the 2000 Ordinance under state law.

[6] In holding that the TIA does not prohibit "taxpayers from defending suits brought by a government to obtain collection of a tax," 527 U.S. at 435, *Acker* criticized the Second Circuit's conclusion in *Keleher v. New England Telephone & Telegraph Co.*, 947 F.2d 547 (2d Cir. 1991), that the "[Congress] necessarily intended for federal courts to abstain from hearing tax enforcement actions in which the validity of a state or local tax might reasonably be raised as a defense." *Acker*, 527 U.S. at 434 (quoting *Keleher*, 947 F.2d at 551). However, it is not clear whether the Court's criticism reflected a concern that *Keleher* left no room for *collection* actions, or whether the Court disagreed with the proposition that the TIA applies to government-initiated actions at all.

457 U.S. at 408. As the Court reasoned in *Grace Brethren*, the TIA prevents a federal court from placing itself in a position to issue declaratory relief that threatens to interfere with the administration of state tax laws: "[T]he Act divests the district court not only of jurisdiction to issue an injunction enjoining state officials, but also of jurisdiction to take actions that 'suspend or restrain' the assessment and collection of state taxes." *Id.*; *see also id.* at 408 n.22 (stating that the TIA "divest[s] the federal courts of jurisdiction to interfere with state tax administration"). A contrary conclusion would "defeat[] the principal purpose of the Tax Injunction Act: 'to limit drastically federal district court jurisdiction to interfere with so important a local concern as the collection of taxes.'" *Id.* at 408-09 (quoting *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 522 (1981)).

B. Lower Federal Courts Are Divided Over The Scope And Application Of *Acker*.

Though state and local governments have generally been allowed to bring *collection* actions in federal court after *Acker*, *see, e.g.*, *City of Philadelphia*, 185 F. Supp. 2d at 444; *Sch. Bd. of Parish of St. Charles v. Quala Sys., Inc.*, 159 F. Supp. 2d 295 (E.D. La. 2001), lower courts are divided regarding the application of *Acker* to *declaratory judgment* actions brought by tax authorities. For example, in *Orange County v. Expedia, Inc.*, 440 F. Supp. 2d 1341 (M.D. Fla. 2006), the County sought a declaratory judgment regarding its "power, privilege and right" to tax the sale of hotel accommodations in the county. *Id.* at 1343. Distinguishing the County's suit from the collection

action authorized in *Acker*, the district court held that the TIA barred the County's declaratory judgment action. *Id.* at 1343-44. Prior to *Acker*, other federal courts reached similar conclusions. *See City of Burbank v. Nevada*, 658 F.2d 708, 709 (9th Cir. 1981) (TIA barred declaratory judgment claim by California municipalities against sister State); *City of Chattanooga, Tenn. v. Bellsouth Telecomm., Inc.*, 1 F. Supp. 2d 809 (E.D. Tenn. 1998) (holding that the TIA barred city's declaratory judgment action seeking a ruling that a city ordinance required telecommunications providers to pay an application and franchise tax); *Edwards v. Transcon. Gas Pipe Line Corp.*, 464 F. Supp. 654, 659 (M.D. La. 1979) (holding that the TIA barred a declaratory judgment action brought by the Governor, Attorney General, and Secretary of Revenue and Taxation seeking a ruling on the validity of the state's use tax on natural gas because "[t]his case involves no special circumstances whatsoever to indicate that it should fall outside of the Tax Injunction Act").

By contrast, in *Mayor & City Council v. Vonage America Inc.*, 544 F. Supp. 2d 458 (D. Md. 2008), the district court held that the TIA did not bar the City of Baltimore's declaratory judgment action seeking a ruling that a telecommunications tax applied to a provider, but did bar the provider's *counterclaim* seeking a declaratory judgment that it was not subject to the tax. *Id.* at 461. The district court then proceeded to render this distinction moot by concluding that the "court has jurisdiction over both the City's claim for declaratory judgment" and—notwithstanding its dismissal of the provider's counterclaim—"the defenses Vonage asserts opposing the applicability of the City's

Telecommunications Tax." *Id.* at 466. Still other courts that have not squarely addressed the issue have noted the confusion precipitated by *Acker*. *See Quala Sys., Inc.*, 159 F. Supp. 2d at 299 ("This Court cannot discern the difference in the federal courts abstaining in an injunction context and adjudicating in a collection context. Nonetheless, the Court is bound to follow *Jefferson County* and thus the ruling rendered herein.").

By adopting the reasoning of the *Vonage* court, the Eighth Circuit aligned itself with courts that have held the TIA does not bar a declaratory judgment claim initiated by a tax authority. *City of Jefferson City*, 531 F.3d at 604. The Eighth Circuit's analysis, however, evinces substantial confusion. For example, though the Eighth Circuit relied upon *Acker* in an attempt to draw a distinction between "a plaintiff who seeks a declaratory judgment that a specific tax is unconstitutional or invalid" and "a plaintiff who seeks a declaratory judgment that a particular taxpayer is engaged in an activity that makes the taxpayer subject to a state or local tax," *id.*, the "validity" of the 2000 Ordinance is squarely at issue in this case, and in either scenario the tax authority could be "enjoin[ed]" or "restrain[ed]" by a federal court from securing tax revenues within the meaning of the TIA. Similarly, in light of the Eighth Circuit's broad reading of *Acker*—and the court's express acknowledgement that *Acker* involved a collection claim that was removed to federal court by the defendant taxpayers, *see id.*—nothing in the Eighth Circuit's decision would prevent *state-court* defendants from evading the TIA by removing those cases to federal court if they can establish diversity.

This case represents a clear opportunity for the Court to address the implications of *Acker* and the applicability of the TIA to conventional declaratory judgment and similar actions brought by state tax authorities regarding the validity of state and local tax provisions under state and local law. Here, the Eighth Circuit permitted the City to circumvent the TIA and *Grace Brethren* and seek "a declaratory judgment pursuant to 28 U.S.C. § 2201 as to the *validity and applicability* of the Ordinance." App. 170a (emphasis added).[7] Though the Eighth Circuit sustained the validity of the 2000 Ordinance, it nonetheless intruded on the administration of state and local tax laws by rejecting the wireless carriers' argument that the Ordinance violated the Missouri Constitution and the Springfield City Charter. The administrative chaos precipitated by the Eighth Circuit's decision is manifest because, given the district court's prior dismissal of the City's collection claim, the Eighth Circuit effectively bifurcated the merits of the wireless carriers' dispute with the City between the federal and state court systems.

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[7] As set forth above, *see supra* note 3, in an apparent effort to shoehorn this case within the fact pattern considered in *Acker*, the Eighth Circuit misstated the nature of the relief sought by the City as a request for a declaratory judgment regarding only the *applicability* of the Ordinance. *City of Jefferson City*, 531 F.3d at 599 ("Count III sought a declaratory judgment that the tax ordinance *applies* to the defendants." (emphasis added)).

II. If *Acker* Is To Be Read Broadly For The Proposition That The Tax Injunction Act Is Inapplicable Whenever A State Or Local Tax Authority Brings Suit, The Court Should Revisit That Holding And Confine *Acker* Accordingly.

A. The Eighth Circuit's Determination That The Tax Injunction Act Allows Federal Courts To Adjudicate Declaratory Judgment Claims Regarding the Validity And Meaning Of Tax Provisions Under State And Local Law Whenever A Tax Authority Brings Suit Is Irreconcilable With The Letter And Purpose Of The Tax Injunction Act.

The plain language of the TIA is inconsistent with the Eighth Circuit's conclusion that application of the TIA's jurisdictional bar depends on the identity of the plaintiff, and that the bar applies only when a claim is brought by a taxpayer. *See City of Jefferson City*, 531 F.3d at 604. As this Court has held, "[t]he statute, on its face, yields no exception to the jurisdictional bar save where the state remedy is wanting." *Farm Credit Servs.*, 520 U.S. at 823. Instead, the prohibition in the TIA turns on the potential consequences of the relief sought by the plaintiff: federal courts are divested of jurisdiction if (1) adjudication of the claim *could* require the court to suspend or restrain the collection of local taxes; and (2) a plain, speedy and efficient remedy is available in state courts. 28 U.S.C. § 1341. Indeed, the Court has repeatedly made plain that the relief requested by the plaintiff—and the possible implications of the plaintiff's request for relief—are the central inquiries in determining whether the TIA applies. *See*

Hibbs, 542 U.S. at 99 ("To determine whether this litigation falls within the TIA's prohibition, it is appropriate, first, to identify the relief sought."); *id.* at 119 (Kennedy, J., dissenting) ("The TIA's language bars this relief and so bars this suit.");[8] *see also Fair Assessment*, 454 U.S. at 184 (considering whether "the relief sought in this case would have a similarly disruptive effect" as injunctive relief). The Eighth Circuit's conclusion that application of the TIA turns

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[8] In 2004, in a closely divided 5-4 opinion, this Court discussed the legislative history of the TIA at length in holding that the TIA did not bar a federal suit brought by Arizona taxpayers that challenged the constitutionality, on federal Establishment Clause grounds, of tax credits conferred on others for contributions made to fund private school tuition. *Hibbs v. Winn*, 542 U.S. 88 (2004). Though the Court fell short of resolving the issue presented by this case, the majority and the dissenting opinions sharply disagreed on whether the TIA is concerned solely with federal interference with a tax authority's attempt to *collect* taxes, or whether the TIA is more broadly concerned with *any* federal interference in the administration of state and local taxes. *Compare, e.g., id.* at 104-105 (majority opinion) ("[I]n enacting the TIA, Congress trained its attention on taxpayers who sought to avoid paying their tax bill by pursuing a challenge route other than the one specified by the tax authority.") *with id.* at 125 (Kennedy, J., dissenting) ("The TIA protects the responsibility of the States and their courts to administer their own tax systems and to be accountable to the citizens of the State for their policies and decisions."). Under either the majority or dissenting views of the TIA's purpose, however, the Eighth Circuit's interpretation of the TIA is deeply problematic, because the City's conventional tax "assessment, levy or collection" claim, 28 U.S.C. § 1341, was dismissed, and the only issues addressed by the federal courts concerned the validity and meaning of the Ordinance under state and local law.

solely on the identity of the plaintiff thus conflicts with "the direct, broad, and unqualified language of the statute." *Hibbs*, 542 U.S. at 126 (Kennedy, J., dissenting).

Importantly, there is no affirmative evidence that the authors of the TIA believed that the statute was inapplicable whenever a state or local tax authority attempts to secure a federal declaration regarding the validity and scope of its tax authority.[9] Just as there is "little practical difference between injunctive and declaratory relief" for purposes of applying the TIA, *Grace Brethren*, 457 U.S. at 408, there is *no* practical difference between declaratory relief sought by a taxpayer and declaratory relief sought by the tax

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[9] To be sure, the vast majority of cases that have given rise to a TIA defense have been brought by taxpayers. *See, e.g.*, *Hibbs*, 542 U.S. at 107 ("[T]his Court has interpreted and applied the TIA only in cases . . . in which state taxpayers seek federal-court orders enabling them to avoid paying state taxes."). *But see id.* at 127 (Kennedy, J., dissenting) (stating that "our failure to consider a question hardly equates to a thing's being decided"). Putting aside that nothing in the text of the TIA suggests that its application turns on the identity of the plaintiff, the Eighth Circuit's decision threatens to shift this paradigm by not only affirmatively inviting state and local tax authorities to press tax claims in federal court whenever it is in their strategic interest to do so, but by opening the door to the removal of state court tax claims to federal court by defendants whenever a case satisfies the requirements of 28 U.S.C. § 1332. *Compare, e.g.*, *Orange County*, 440 F. Supp. 2d at 1343 (TIA barred assertion of federal jurisdiction over County's declaratory judgment action originally brought in state court and removed by taxpayer to federal court).

authority. Regardless of how the parties are aligned, the federal court is declaring the validity *vel non* of a state or local tax, and the case threatens federal interference with the administration or enforcement of the tax. *Compare City of Jefferson City*, 531 F.3d at 599 (noting that the City "sought a declaratory judgment that the tax ordinance applies to the defendants") *with, e.g.*, *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293, 299 (1943) (dismissing case where the taxpayer sought "a declaratory judgment that the state law as applied to petitioners and their employees is unconstitutional and void").

Irrespective of who initiates the suit, the court must decide the validity of the tax and that decision, if it is contrary to the claim brought by the tax authority, will effectively "enjoin, suspend or restrain the assessment, levy or collection of [a] tax under State law," 28 U.S.C. § 1341, and result in a reduction in tax revenues, *Hibbs*, 542 U.S. at 106. *See, e.g., Keleher*, 947 F.2d at 549-50 ("Thus, the fact that the City, rather than NET, was the party that invited the intervention of the federal courts does not serve to eliminate the Act's jurisdictional bar."), *criticized in Acker*, 527 U.S. at 434;[10] *see also Hardwick v. Cuomo*, 891 F.2d 1097, 1104 (3d Cir. 1989) ("[t]he purposes served by the Tax Injunction Act are no less thwarted by actions brought by persons other than taxpayers to challenge the imposition of state taxes than by taxpayers' actions"); *City of Burbank*, 658 F.2d at 709 (holding that the TIA barred declaratory judgment claim brought by California municipalities

[10] *See* discussion *supra* note 6.

against a sister State).[11] Even the *Vonage* court, which held that the TIA barred the taxpayer's counterclaim but not the tax authority's declaratory judgment claim, recognized that it could not adjudicate the case without addressing the taxpayer's defenses. 544 F. Supp. 2d at 466.

Further evidence that the prohibition in the TIA focuses on the subject matter of the suit rather than the identity of the plaintiff can be found in the Anti-Injunction Act ("AIA"), 26 U.S.C. § 7421(a). *See Hibbs*, 542 U.S. at 102-03; *Acker*, 527 U.S. at 434-35. Although the TIA was loosely modeled after the AIA, there are significant textual differences between the two statutes. *See, e.g.*, *Hibbs*, 542 U.S. at 121 (Kennedy, J., dissenting). The AIA "shields *federal* tax collections from federal-court injunctions," *id.* at 104 (majority opinion) (emphasis added), and provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court *by any person, whether or not such person is the person against whom such tax was assessed.*" 26 U.S.C. § 7421(a) (emphasis added). Thus, the AIA expressly bars suits to restrain the assessment or collection of taxes by "person[s]," a term that is defined to include "corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals," 1 U.S.C. § 1, but does not include the United States. *See Acker*, 527 U.S. at 434-35 (stating

[11] The Eighth Circuit's ruling that the TIA does not apply to the City's declaratory judgment claim places the Eighth Circuit in conflict with the Ninth Circuit's ruling in *Burbank* that the TIA does apply to a tax authority's declaratory judgment claim.

that the AIA "of course, does not bar federal-court adjudication of suits initiated by the United States to collect federal taxes; it precludes only suits brought by taxpayers to restrain the United States from assessing or collecting such taxes").

In sharp contrast to the AIA, the prohibition in the TIA broadly commands that district courts "shall not enjoin, suspend or restrain" state taxes, and does not qualify this prohibition in any way with respect to the identity of the party bringing suit. 28 U.S.C. § 1341. Instead, the only qualification in the TIA itself relates to circumstances "where a plain, speedy, and efficient remedy may [not] be had in the [State] courts." *Id.*; *see also Farm Credit Servs.*, 520 U.S. at 823-24 (recognizing exceptions to the TIA only "where the state remedy is wanting" or where the "United States sues to protect itself or its instrumentalities from state taxation").

The *Acker* Court failed to acknowledge this critical distinction and completely ignored that, unlike the AIA, the prohibition in the TIA is not party-specific.[12] The absence of any language in the TIA that mirrors the party-specific language in the AIA is logical, however, because the AIA is focused on federal judicial interference with *federal* tax laws, while the prohibition in the TIA is concerned with intergovernmental interference, *viz.*, federal inteference with tax functions

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[12] The loose resemblance between the AIA and the TIA was the basis for the Court's conclusion in *Acker* that, like the AIA, the TIA does not bar *collection* actions brought by a tax authority. *See Acker*, 527 U.S. at 435.

traditionally reserved to *state* administrators and courts. In this respect—though the Court's prior TIA decisions have ignored the asymmetry between the TIA and the AIA—the TIA's categorical bar parallels other statutory prohibitions on federal interference with state courts and agencies. *See, e.g.*, 28 U.S.C. § 2283 (stating that "[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments").

Moreover, *Acker* fails to acknowledge that another precursor of the TIA was the Johnson Act, the purpose of which is "to prevent public utilities from going to federal district court to challenge state administrative orders or avoid state administrative and judicial proceedings." *Grace Brethren*, 457 U.S. at 410 n.22; *see also id.* ("Both the Senate and House Reports, as well as the congressional debates of the Act, expressly rely on the congressional purpose underlying the Johnson Act of 1934 . . . ."). In language similar to that used in the TIA, the Johnson Act dictates that "[t]he district courts shall not enjoin, suspend or restrain the operation of, or compliance with, any order affecting rates chargeable by a public utility and made by a State administrative agency or a rate-making body of a State political subdivision" where four conditions are met, including that "[a] plain, speedy and efficient remedy may be had in the courts of such State." 28 U.S.C. § 1342. In contrast to the party-specific language in the AIA, the plain language of the Johnson Act demonstrates that, in enacting the TIA, Congress was not concerned with protecting state tax revenues, but

with imposing a categorical bar on federal interference in conventional state tax administration and enforcement proceedings. *See Grace Brethren*, 457 U.S. at 409 n.22.

Applying traditional canons of statutory interpretation, there is no basis to read a party-specific limitation into the TIA because there is no textual support for such a limitation. *See, e.g., Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 168 (1993) ("*Expressio unius est exclusio alterius.*"). Thus, at least as applied to tax "assessment, levy or collection" actions that raise issues of state and local law, 28 U.S.C. § 1341, the analysis of the AIA in *Acker* is flawed because it fails to recognize that the jurisdictional bar in the TIA, in contrast to the AIA, is not dependent on the identity of the plaintiff.

B. The Eighth Circuit's Broad Construction Of The Court's Holding In *Acker* Invites Absurd Results.

The Eighth Circuit's refusal to apply the TIA to the City's declaratory judgment claim invites absurd results. As a threshold matter, the Eighth Circuit's analysis opens a breach in the TIA that effectively guts what this Court has consistently identified as a central purpose of the statute: "The [TIA] was . . . shaped by state and federal provisions barring anticipatory actions by taxpayers to stop the tax collector from initiating collection proceedings." *Acker*, 527 U.S. at 435; *see also Hibbs*, 542 U.S. at 104-05 ("Congress trained its attention on taxpayers who sought to avoid paying their tax bill by pursuing a challenge route other than the one specified by the tax authority."). By endorsing both

(1) federal declarations of the validity and meaning of tax provisions under state and local law; and (2) at least in concept, the removal of such actions to federal court whenever the requirements of diversity jurisdiction are met, the Eighth Circuit has invited taxpayers to make an end-run around the prohibition in the TIA by refusing to pay, waiting for the tax authority to sue, and then removing the case to federal court. Though, as this Court noted in *Acker*, discretionary abstention doctrines may afford an alternate means of avoiding the assertion of federal jurisdiction in such circumstances, 527 U.S. at 435 n.5, it would be bizarre to conclude that, as applied to conventional tax suits brought under state and local law, the emphatic prohibition set forth in the TIA adds absolutely nothing of substance to the discretion that federal courts have long exercised in the absence of a statutory command.

Moreover, if *Acker* is construed to hold, in effect, that the TIA is inapplicable whenever a declaratory judgment action is brought by a tax authority, the existence of federal jurisdiction turns on whether a state or local tax authority decides to "waive" the protections of the TIA. This theory is flawed, however, both for the reasons set forth above and because, as Justice Alito opined post-*Acker* when he was a judge on the Third Circuit, "a [tax authority] cannot waive the Tax Injunction Act's protection." *In re Hechinger Inv. Co. of Delaware, Inc.*, 335 F.3d 243, 247 n.1 (3d Cir. 2003) (Alito, J.); *accord Hardwick*, 891 F.2d at 1104 ("[E]ven though the Tax Injunction Act is intended to protect the tax authorities acting under state law, it has been regularly held that they cannot waive its jurisdictional

bar as it is a restraint on the courts, not the parties."). Contrary to the Eighth Circuit's analysis, state and local tax authorities should not be permitted to circumvent the TIA's jurisdictional bar by purporting to "waive" their way into federal court to federalize conventional state and local tax assessment, collection and levy disputes in which there is no federal interest.

Furthermore, a waiver theory of the TIA ignores the procedural complications that easily can be introduced by state law, and further ignores whether the tax authority before the court should be deemed competent to waive the TIA's jurisdictional bar. In this case, the Eighth Circuit's refusal to apply the TIA's prohibition bifurcated the parties' tax dispute between the federal and state courts because, as the district court held, the City's collection claim was barred as a matter of state law by the City's failure to comply with its own mandatory assessment and collection procedures. In addition, the clear import of the Eighth Circuit's decision is that subordinate, local tax authorities can compel federal courts to construe the validity of state constitutional provisions and statutes that bear on tax assessment and collection without the consent (or, for that matter, the participation) of the state's attorney general. For example, the Eighth Circuit's decision would permit a *municipality* to seek a ruling that a *state* tax law is unlawful, *see, e.g., Village of Arlington Heights v. Reg'l Transp. Auth.*, 653 F.2d 1149 (7th Cir. 1981) (dismissing on Fourteenth Amendment grounds a municipal declaratory judgment action that challenged the constitutionality of a state tax statute and implementing regulations), or a ruling that a *sister state's* tax law is unlawful, *see, e.g., City of Burbank*,

658 F.2d at 709 (TIA barred municipal declaratory judgment claim against sister state). In either case, the state attorney general may have no say in whether the validity of the state's tax law should be considered by a federal court. Instead, the decision to invoke the jurisdiction of the federal courts is entirely dependent upon the whim of the subordinate, local tax authority that brings suit.

These are not hypothetical concerns because, in this very case, the Missouri Legislature enacted a law (HB 209) that replaced the City of Springfield's tax (and similar taxes in other cities) with a statewide tax scheme that purported to compel dismissal of the case at bar. Because the state law would have disposed of its federal action, the City of Springfield asked the federal district court in this case to hold that HB 209 violated the Missouri Constitution. Doc. 250. The City's request thus placed the federal courts squarely in the position of "enjoin[ing], suspend[ing] or restrain[ing] the assessment, levy or collection," 28 U.S.C. § 1341, authorized by the state tax statute. Though the district court was persuaded to abstain and avoid consideration whether to enjoin, suspend or restrain HB 209 on the ground that there happened to be a parallel action pending in state court that presented the same issue, *see* App. 112a; *City of Springfield v. Sprint Spectrum L.P.*, 203 S.W.3d 177 (Mo. 2006), the Eighth Circuit's ruling counterintuitively suggests that the TIA would not have presented any impediment to the City's federal court challenge.

Last, if the Eighth Circuit's decision means that federal courts can render declaratory judgments on the

validity of state and local tax laws *only if the decisions are favorable to the tax authority, but cf. Acker*, 527 U.S. at 435 (holding that the TIA does not bar taxpayers in *collection suits* "from urging defenses . . . that the tax for which collection is sought is invalid"), the court's decision runs afoul of at least two principles that are essential to the orderly administration of justice.

First, recognition of a "tax authority" exception to the TIA is inconsistent with the common-sense rule that "[t]he existence of federal subject matter jurisdiction over a given case *does not, and indeed cannot, turn upon its eventual resolution on the merits.*" *In re Chateaugay Corp.*, 53 F.3d 478, 493 n.7 (2d Cir. 1995) (emphasis added); *accord Steel Co. v. Citizens for Better Env't*, 523 U.S. 83, 89 (1998); *Verizon Maryland, Inc. v. Pub. Serv. Comm'n*, 535 U.S. 635, 642-43 (2002). By the Eighth Circuit's reasoning, the basis for federal subject matter jurisdiction would potentially evaporate the moment that the case is decided in favor of the taxpayer. *See, e.g., Keleher*, 947 F.2d at 549 (after bringing suit for a declaratory judgment, City moved to vacate the district court's ruling in favor of the taxpayer because the decision had the effect of enjoining the City's collection of tax revenues).

Second, any suggestion that the implied exception in the TIA is a one-way ratchet raises serious due process concerns, because it would permit a tax authority whose claim is defeated in federal court to obtain a second bite at the apple by filing another action alleging identical claims in state court. *See, e.g., Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 401 (1981) (noting that the doctrine of res judicata "is a rule of fundamental and

substantial justice" (quotation omitted)); *Blonder-Tongue Labs., Inc. v. Univ. of Ill. Found.*, 402 U.S. 313, 329 n.18 (1971) (noting "that one of the underpinnings of the general concept of res judicata is the prevention of harassment of some litigants by the repeated assertion of the same or different claims against them by others"); *Cont'l Can Co., U.S.A. v. Marshall*, 603 F.2d 590, 597 (7th Cir. 1979) (stating that "it appears rather fundamental that the Government cannot, without violating due process, needlessly require a party to undergo the burdens of litigation").

Because the Eighth Circuit's ruling invites absurd results, the Court should grant certiorari to make clear that the TIA constrains the right of state and local tax authorities to pursue declaratory judgment claims in federal court concerning "the assessment, levy or collection of any tax under State law," 28 U.S.C. § 1341.

CONCLUSION

For the foregoing reasons, the Court should grant Alltel's petition for a writ of certiorari.

Respectfully submitted,

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